FILED
OCT 29 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1956

No. 290

GILBERT GRABLE, LOUISE GRABLE, Trustees, and DONALD L. GRABLE, Administrator,

Defendants and Appellants,

vs.

FLOYD BURNS and LAURA B. BURNS,

Plaintiffs,

and

THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, IN AND FOR THE FOURTH APPELLATE DISTRICT, SAN BERNARDINO SECTION,

Appellees.

Motion for Permission to File a Petition for a Rehearing for a Writ of Certiorari

and

Petition for a Rehearing for a Writ of Certiorari.

GILBERT GRABLE, *Trustee,*
LOUISE GRABLE, *Trustee,*
DONALD L. GRABLE, *Administrator,*
801 Main Street,
Highgrove, California,
In Propria Persona.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

PAGE

Motion for Permission to File a Petition for a Rehearing for a Writ of Certiorari to the Honorable Earl Warren, Chief Justice, and to the Associate Justices of the Supreme Court of the United States 1

Petition for a Rehearing for a Writ of Certiorari to the District Court of Appeal of the State of California, Fourth District, San Bernardino Section 3

Questions presented 6

Argument 13

I.

A Superior Court of one jurisdiction in the State of California is without power to void and reverse a decision and order, final for want of appeal in time, of another Superior Court in another jurisdiction of the said State of California 13

II.

How then can another department of the Superior Court of the State of California reverse the decision of the first department 15

III.

Rights and immunities guaranteed by the Fourteenth Amendment to the United States Constitution 16

IV.

The dignity and integrity of the courts of the nation must be maintained 18

Conclusion 18

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Carlson v. State of Washington, 234 U. S. 103	17
Davis v. Wechsler, 263 U. S. 22	17
Diamond v. Garth, 46 Cal. App. 2d 443	15
Gridley v. Boggs, 62 Cal. 190	16
Perry v. West Coast Bond & Mortgage Company, 29 P. 2d 279	16
Pessara v. Pessara, 80 Cal. App. 2d 965	13
Sakuma v. Zellerbach Paper Co., 25 Cal. App. 2d 309	15

STATUTES

Code of Civil Procedure, Sec. 475	15
Code of Civil Procedure, Sec. 1837	16
Code of Civil Procedure, Sec. 1908	15
Code of Civil Procedure, Sec. 1917	16
Deering's California Code of Civil Procedure:	
Sec. 177, Clause 2, p. 80	5, 17
Sec. 178	5, 17
Sec. 475, p. 212	4
Sec. 1209, Clause 5	5, 17
Sec. 1219	6, 17
Sec. 1222	5, 17
Sec. 1837	5
Sec. 1917	5
United States Code Annotated, Title 28, Sec. 1651(a)	1
United States Constitution, Fourteenth Amendment	16, 18

IN THE

Supreme Court of the United States

October Term, 1956
No. 290

GILBERT GRABLE, LOUISE GRABLE, Trustees,
and
DONALD L. GRABLE, Administrator,
Defendant and Appellants,
vs.
FLOYD BURNS and LAURA B. BURNS,
Plaintiffs,
and
THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, IN AND FOR THE FOURTH APPELLATE DISTRICT, SAN BERNARDINO SECTION,
Appellees.

Motion for Permission to File a Petition for a Rehearing for a Writ of Certiorari to the Honorable Earl Warren, Chief Justice, and to the Associate Justices of the Supreme Court of the United States.

Comes now the defendants-appellants, and make their motion that permission be granted to file their petition for a rehearing for a writ of certiorari as authorized by 28 U. S. C. A., Section 1651(a) in the above entitled action.

Dated: 26th day of October, 1956.

GILBERT GRABLE, *Trustee,*
LOUISE GRABLE, *Trustee,*
DONALD L. GRABLE, *Administrator.*
In Propria Persona.

IN THE

Supreme Court of the United States

October Term, 1956
No. 290

GILBERT GRABLE, LOUISE GRABLE, Trustees,
and
DONALD L. GRABLE, Administrator,
Defendant and Appellants,

vs.

FLOYD BURNS and LAURA B. BURNS,
Plaintiffs,
and
THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, IN AND FOR THE FOURTH APPELLATE DISTRICT, SAN BERNARDINO SECTION,
Appellees.

Petition for a Rehearing for a Writ of Certiorari to the District Court of Appeal of the State of California, Fourth District, San Bernardino Section.

Petitioners, Gilbert Grable, Louise Grable, and Donald Grable, pray that a Writ of Certiorari issue to review the judgment of the District Court of Appeal of the State of California, Fourth Appellate District, San Bernardino Section thereof, entered on January 4, 1956 [Certified Record, Opinion Fourth District Court of Appeal, p. 1; fourth Petition for Hearing in the Supreme Court, last 2 pages of Certified Record; Appendix, p. 1]

whereby judgment of the Superior Court of the State of California, in and for the County of San Bernardino, was affirmed.

These petitioners rather than unduly enlarge the record in this case, do incorporate the petition heretofore submitted in its entirety by reference in this brief, and also by reference do incorporate in its entirety the opinion of the District Court of Appeal which, as the appendix, is bound into the former petition.

In addition, and supplemented to the above referred to petition, we respectfully submit for the court's consideration the following questions and argument.

The questions here sought to be reviewed arise under the constitutional provisions and statutes cited in the prior petition and, in addition thereto, the following statutes of the State of California:

Deering's California Code of Civil Procedure, Section 475, page 212:

> "The court must, in every stage of an action, disregard any error, improper ruling, instruction or defect, in the pleadings or proceedings which in the opinion of said court, does not affect the substantial rights of the parties. *No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect,* unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained or suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown."

Deering's California Code of Civil Procedure, Section 1222:

"The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive."

Deering's California Code of Civil Procedure, Section 1917:

"The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment."

Deering's California Code of Civil Procedure, Section 1837:

"Conclusive or unanswerable evidence is that which the law does not permit to be contradicted. For example, the record of a court of competent jurisdiction cannot be contradicted by the parties to it."

Deering's California Code of Civil Procedure, Section 177, Clause 2, page 80:

"Every judicial officer shall have power: (2) To compel obedience to his lawful orders as provided in this code."

Deering's California Code of Civil Procedure, Section 178:

"For the effectual exercise of the powers conferred by the last Section, a judicial officer may punish for contempt in the cases provided in this code."

Deering's California Code of Civil Procedure, Section 1209, Clause 5:

"The following acts or omissions in respect to a court or Justice, or proceedings therein, are contempts of the authority of the court: (5) Disobedience of any lawful judgment, order, or process of the court."

Deering's California Code of Civil Procedure, Section 1219:

> "When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act must be specified in the warrant of commitment."

QUESTIONS PRESENTED.

There are two actions involved in this matter. Both require the attention of the court in its examination of the violation of the constitutional rights of these petitioners. The same issue between the same parties is up for decision in both actions.

In the interest of brevity and clearness, we will first take up the original action, then the subsequent action, and finally, the violation of petitioners' constitutional right by the conflict present in the two decisions.

I.

The first action involved in this matter was filed on or about the 5th day of June, 1952, in the Superior Court of the State of California, in and for the County of Los Angeles, being numbered 600136, wherein and whereby the grantor sought declaratory relief as to whether the Sidney L. Beach Trust, a written declaration of trust, was valid or invalid, and if held to be invalid, an accounting from the trustees, Gilbert Grable and Louise Grable. The trustees and beneficiaries of the said trust were joined in the complaint, as parties defendant.

That after hearing had thereon before the Honorable Arthur Crum of said court, the said Judge Crum handed down and filed his written decision and order, and there-

upon a minute order was made and entered. [Certified Record; Affidavit in Support of Oral Motion to Abate Action, Ex. "B," therewith.]

That said minute order of decision and order was entered on the 5th day of November, 1953, in the official minutes of the court. No appeal being taken from said decision, or order, they became final at the expiration of the sixty days permitted by law in which to file said appeal.

One week after the decision became final for want of appeal, Mr. Beach passed away. Thereafter, the probate court appointed Donald Grable as administrator with the will annexed.

A notice and demand was served on plaintiffs in the second action for return of the trust property they held as transferees of the trustees.

The said plaintiffs replied by filing the second action herein referred to, to quiet title, and avoid the accounting, based on the premise that they were not parties to the Los Angeles action and not bound by that decision and order.

Thereafter, the administrator sought assistance from the court in executing the court's order to dissolve the trust and make the accounting. Whereupon, the court permitted the administrator to file an amended and supplemented complaint to bring in as parties defendant to the action, those persons who held or had held trust property as transferees of the trustees, Gilbert Grable and Louise Grable, that the parties to the action have their rights, duties, and liabilities under said trust as to the property of the trust estate, be declared by the court, that the trust could be dissolved and a true and correct

accounting could be made to permit a final judgment in the action to be entered, that the estate could be settled and the probate closed.

The amended and supplemented complaint was filed, and the summons thereon issued on the 6th day of June, 1955.

The dissolution of the trust, and accounting, are still in progress.

II.

The subsequent action was filed by Floyd Burns and Laura Burns in the Superior Court of the State of California, in and for the County of San Bernardino, on the 6th day of May, 1954, to quiet title in them against the administrator Donald Grable, and the trustees, Gilbert Grable and Louise Grable.

The administrator and the trustees pleaded the decision in the Los Angeles action (Sec. 1 herein), as a final determination of validity of the Sidney L. Beach Trust, and the order to dissolve and account in the first action as a final determination of the invalidity of the Grant Deed from the trustees to the plaintiffs.

Trial was held on the 6th of January, 1955, wherein evidence was submitted that plaintiffs had knowledge, prior to the transfer, of the recording of the trust in San Bernardino County on the 20th day of February, 1950 [Certified Record; Opinion, p. 9; Appendix, p. 7], and that plaintiffs had notice of the action (Sec. 1 herein), in time to have entered the action or appealed from the decision, but did neither. [Certified Record, Affidavit in Support of Oral Motion to Abate Action.]

Defendants argued:

a. That plaintiffs were parties to the first action (Sec. 1 herein), and bound by the decision and order made therein.

b. That the San Bernardino court was without jurisdiction to make a decision quieting title in plaintiffs until the completion of the action (Sec. 1 herein) wherein the status of the trust had been finally determined, and the dissolution and accounting would determine the validity of the plaintiffs' Grant Deed.

Defendants were overruled, and the opinion of the Fourth District Court of Appeal reversed the Los Angeles court (Sec. 1 herein), and held the trust valid and in effect, ordered the defendants not to dissolve the trust and to make no accounting. [Certified Record; Opinion, p. 15; Appendix, p. 11.]

III.

In Section 1 herein, the court held the trust void for violating the rule against perpetuities, and ordered the trust dissolved and an accounting rendered. It subsequently ordered all parties holding trust property to come in that the executing of the prior order of the court could be carried out. Said execution is now in progress.

In Section 2 herein, the court held the trust valid and ordered the trustees to surrender the trust property to the plaintiffs, said trust not being subject to dissolution and, in effect, no accounting to the estate required.

The defendants' rights and immunities under the first section of the Fourteenth Amendment to the Constitution

of the United States, are abridged by the violation of their rights to liberty, to own property, and to equal protection of the laws for the following reasons:

a. To continue with the dissolution of the trust and the accounting now in progress as ordered by the first court (Sec. 1 herein), *would place the petitioners in contempt of the second court (Sec. 2 herein)*, it having held the trust valid and ordered the trustees not to dissolve the trust or account for the trust property.

b. To refuse to dissolve the trust and make the accounting and to carry out the orders of the second court (Sec. 2 herein), *would be contempt of the first court (Sec. 1 herein)*.

c. The decisions of the first court of the total invalidity of the Sidney L. Beach Trust and the orders pursuant thereto, are directly opposite to that of the second court that the trust is valid, and no dissolution or accounting is to be made.

The petitioners in executing the orders of the first court are in contempt of the second court and subject to fine and imprisonment until the default is cured.

Likewise, compliance with the second court decision and order is contempt of the first court and subject to fine and imprisonment.

The first decision and order are final for want of appeal in time, and therefore, are not subject to review by any court.

The second decision is still subject to review by this court, *and due to the entrapment of the petitioners, and*

the respondents, in a situation *wherein there is no escape from an act of contempt by both parties to the action, with its mandatory punishment of fine and imprisonment,* it is respectfully submitted that the writ should be granted and the judgment reversed.

d. The respondents are parties to the first action though not named in the complaint for the following reasons:

There is no difference in the legal effect of recording a trust instrument and filing a *Lis Pendens.* Both give notice to the world of the possible failure of the title of a party to the transaction and that subsequent grantees take subject to the validity of their grantor's title, where after a transfer, an action is prosecuted to determine the validity of the grantor's title, if the grantee has knowledge in time to enter the action or to appeal from the decision therein and does not avail himself of his opportunity, he is nevertheless a party to the action and bound by the decision and order therein against his grantor.

For the above reasons, the first court had jurisdiction, and the respondents were parties to the action and bound by the decision of the invalidity of the trust and the order to dissolve and account.

The questions presented are:

1. Where a Superior Court of one county of the State of California makes a decision on the validity of a trust and also makes an order based on that decision

which becomes final for want of appeal, is it binding on the Superior Court of another county in said State of California, wherein the same question is at issue between the same parties in an action subsequent to the decision and order of the first court where said decision and order has become final for want of appeal?

2. Can one jurisdiction of the Superior Court of the State of California reverse the decision and order of another jurisdiction of the Superior Court of the State of California after said decision and order has become final for want of appeal?

3. Can two California courts create a situation by their decisions and orders wherein all the parties to the action must be in contempt of court and subject to fine and imprisonment?

4. Can two California courts create a situation by their decisions and orders, wherein the courts and the judiciary are held up before the public, for ridicule and laughter, for the impracticability of their actions?

ARGUMENT.

The judgment of the courts below should be reversed for the following reasons:

I.

A Superior Court of One Jurisdiction in the State of California Is Without Power to Void and Reverse a Decision and Order, Final for Want of Appeal in Time, of Another Superior Court in Another Jurisdiction of the Said State of California.

The decision and order in the first action (Sec. 1 herein), was final for want of appeal, and partially executed when the second action (Sec. 2 herein) was filed.

To protect the parties to an action who were ordered by a court to perform certain acts, from the effect of a reversal of the decision or order by the original court, or any other court, the rules on appeal were amended in the State of California.

We take the liberty of quoting in some length from the California case wherein the new rules were explained and interpreted for the benefits of the legal profession in California:

Pessara v. Pessara, 80 Cal. App. 2d 965:

> (1) "An order of the trial court entered in the minutes which contained no directions that a written order should be prepared and signed and filed, and which required no findings under Rule 2, (b), (2), of Rules on Appeal became final 60 days after entry of the minute order, and where an appeal was not taken within the 60 day period, a formal order signed

by the court subsequent to entry of the minute order was void and an appeal from such order was abortive.

* * * * * * * *

"From a practicable standpoint, the cases prior to 1943, held that the determinative factor was what the judge had in mind when he announced his first decision. Such a subjective test, depending as it did upon the personal and frequently only partially disclosed intent of the trial judge, proved highly unsatisfactory. It was to rectify this condition that Rule 2 (b), (2), was adopted, in his article discussing the new rules in 17 Southern Calif. Law Review 79. The draftsman of the rules, after first discussing the complexities and ambiguities existing under the old statute, has this to say about the new rule (P. 86): 'This rule proceeds upon the theory that under the statutes and practices the normal method of evidencing and authenticating an order is by entry in the minutes. *Presumptively, therefore, the minute entry is the entry of the order for the purpose of fixing time to appeal and the parties may rely on it unless the contrary is indicated on the face of the minute entry itself.* It is immaterial that the court contemplates the filing of a formal order, and considers the oral pronouncement as preliminary and ineffective. *The parties need not and cannot speculate on such undisclosed intentions. For them the minute entry starts the time running unless the court as part of its oral pronouncement directs that a written order be prepared and filed and this direction is made a part of the minute order.* That this is the purpose and effect of the new rule is made crystal clear by its language. It provides that the date of entry of an order entered in the minutes "shall be the date of its entry in the minutes, unless the entry in the minutes expressly

directs that a written order be prepared, signed, and filed." There is no room for interpretations. The language is clear and certain.'"

It is well established in California that a court cannot change its decision after once made after regular submission.

Diamond v. Garth, 46 Cal. App. 2d 443 at page 448:

"While a court has power to correct mistakes in its records and proceedings, and to set aside judgments and orders inadvertently made, which are not the exercise of judgment, *it has no power, having once made a decision after regular submission, to set aside or amend for judicial error.*"

II.

How Then Can Another Department of the Superior Court of the State of California Reverse the Decision of the First Department.

Code Civ. Proc., Sec. 475;

Code Civ. Proc., Sec. 1908;

Sakuma v. Zellerbach Paper Co., 25 Cal. App. 2d 309.

"On this question we quote from 2 Freeman on Judgments—Sec. 900 Page 1894: *'Any proceeding which is designed or the primal purpose of which is to establish status is to that extent a proceeding in rem, and the judgment or decree, if upon the merits, is as conclusive as any other judgment in rem.'*"

Gridley v. Boggs, 62 Cal. 190, page 202 starting in 4th line from bottom of page:

> "*The judgment of the Superior Court determined that a certain instrument purporting to be the last will and testament of George W. Gridley, was not his last will and testament.* The proceeding was not a special inquiry to determine his status as to sanity or insanity. *The finding of insanity was a probative fact upon which the court held it to be invalid,* as it might have held it to be invalid upon proof of duress or undue influence."

Code Civ. Proc., Sec. 1917:

Code Civ. Proc., Sec. 1837.

Perry v. West Coast Bond & Mortgage Company, 29 P. 2d 279:

> "In view of these authorities we are forced to conclude that the two judgments were independent to the extent that the first was a final determination of the issues then presented and, as such, finally adjudged this plaintiff's liability for the deficiency and for damages for retention of the property. The execution was properly issued on that judgment."

III.

Rights and Immunities Guaranteed by the Fourteenth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution guarantees certain rights and immunities to the citizens of the United States. The rights to have liberty, property, and equal protection of the laws are denied by the opinion and judgment here sought to be reviewed. The entrapment of these petitioners, by the conflicting decisions and orders of the two courts, is complete and

they are helpless to legally save themselves in the state courts from being in contempt of one or the other of the two departments of the Superior Court, and subject to fine and imprisonment for the contempt.

Deering's California Code of Civil Procedure:

Sec. 177, Cl. 2:

Sec. 178:

Sec. 1209, Cl. 5:

Sec. 1219:

Sec. 1222.

This court has long been zealous in correcting these conditions.

Carlson v. State of Washington on relation of Curtiss, 234 U. S. 103 at page 106:

> "While in ordinary cases, we are bound by the findings of the state court of last resort respecting matters of fact, it is hardly necessary to say that the court cannot, by omitting to pass upon the basic questions of fact deprive a litigant of the benefit of a Federal right, any more than it could do so by making findings that were wholly without support in the evidence."

Davis v. Wechsler, 263 U. S. 22 at page 24:

> "We are of the opinion that the judgment must be reversed. Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated in the name of local practice."

IV.

The Dignity and Integrity of the Courts of the Nation Must Be Maintained.

It is vital to the well-being of this country that the people willingly respect the dignity and integrity of the courts of the states and the federal government.

It is the function of the Supreme Court of the United States with its right of supervision over the state courts to accept jurisdiction of an action and correct any situation where, in its judgment, the dignity, integrity, and judgment of any court might be questioned. Or, in this case, where the judgment of the second court affirmed by the District Court of Appeal creates a situation wherein all the parties to the action cannot escape being in contempt of court.

CONCLUSION.

Wherefore, your petitioners pray:

That this court issue a Writ of Certiorari to the District Court of Appeal of the State of California in and for the Fourth Appellate District, San Bernardino Section thereof, to the end that these petitioners may have the judgment in the action here submitted for review, reversed for violating the rights and immunities guaranteed by the first section of the Fourteenth Amendment to the Constitution of the United States, to the petitioners and the respondents in this action, in that they could not escape being in contempt of a court.

Respectfully submitted,

GILBERT GRABLE, *Trustee*,
LOUISE GRABLE, *Trustee*,
DONALD L. GRABLE, *Administrator*,
In Propria Persona.